80-1234

UNITED STATES SUPREME COURT

1980-1981 Term

C.V. COMPTON SHAW — PETITIONER

V.

THE UNIVERSITY OF TEXAS HEALTH
HEALTH SCIENCE CENTER AT DALLAS — RESPONDENT

RECEIVED
JAN 5 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On appeal from the United States Court of Appeals for the Fifth Circuit, on Writ of Certiorari to the United States Supreme Court.

MOTION TO PROCEED UNDER RULE 47 OF THE RULES OF THE SUPREME COURT AND THROUGH TYPEWRITTEN PAPERS.

C.V. COMPTON SHAW
4900 Lakeside Dr.
Dallas, Texas 75205
(214)-526-0744

For Respondent:
Ms. Iris J. Jones
Assistant Atty. Gen.
P.O. Box 12548
Capitol Station
Austin, Texas 78711
(512)-475-3131

TABLE OF CONTENTS

Table of Contents----------p.1

Table of Authorities----------p.1

Motion to Proceed as a Veteran and To Proceed

Through Typewritten Papers----------p.2-3

Affidavit As to Veterans Status----------p.4

Certificate of Service----------p.5

Appendix----------p.6

TABLE OF AUTHORITIES

Vietnam Veteran's Readjustment Assistance Act, 38

U.S.C.2012 et seq.----------p.2

38 U.S.C. 2022----------p.2

MOTION TO PROCEED AS A VETERAN
AND TO PROCEED THROUGH TYPEWRITTEN
PAPERS

THE APPELLANT, C.V. COMPTON SHAW, moves this Honorable Court to allow him to proceed as a veteran and through typewritten papers. The Appellant initially brought this action through a pro-se complaint alleging violation of the Vietnam Veteran's Readjustment Assistance Act, 38 U.S.C. 2012 et seq.; and, although the Appellant realizes this statute does not fall under 38 U.S.C. 2022, the Appellant argues that it was the intent of Congress that such a route be available for veterans, under relevant statutes. It should be noted that it has been several years since the Appellant appealed the local decision of the Department of Labor finding of no fault in the Appellant's complaint under the Vietnam Veteran's Readjustment Assistance Act; and, that the Appellant has heard nothing concerning such appeal, since the filing of such appeal, from the Department of Labor, except the testimony of Mr. Bill A. Bett, the subpoenaed witness from the Department of Labor, who, at the trial at the District Court, on January 23, 1980, in addition to other testimony regarding the case, stated that he had no knowledge in regard to the Appellant's appeal of the decision of the local Department of Labor.

MOTION TO PROCEED AS A VETERAN
AND TO PROCEED THROUGH TYPEWRITTEN
PAPERS cont.

On December 21, 1979, the District Court denied Appellant's motion to prosecute the action in forma pauperis. The Appellant lives with his parents, earns approximately $200.00 per month, and attends school approximately sixteen hours per week. The Appellant's net worth is approximately $7000.00. The Appellant believes that his cause is just and that his case is based upon facts and principles of law which justify the award of the damages sought in the amount of $3,000,000.00.

Respectfully submitted,

C.V. Compton Shaw
4900 Lakeside Dr.
Dallas, Texas 75205
(214)-526-0744

AFFIDAVIT AS TO VETERANS STATUS

I, C.V. COMPTON SHAW, being duly sworn, do depose and say as follows: that I am over eighteen years of age, have never been convicted of a crime involving moral turpitude, that such representations which have been made in this document, by me, to this Honorable Court, are, to the best of my knowledge, true.

I served on active duty, in the United States Army, from October 4, 1968 until July 14, 1970 and was honorably discharged on October 1, 1974.

The Appellant believes that his cause is just and that his case is based upon facts and principles of law which justify the award of the damages sought in the amount of $3,000,000.00.

Respectfully submitted,

C.V. Compton Shaw
4900 Lakeside Dr.
Dallas, Texas 75205
(214)-526-0744

THE STATE OF TEXAS }
THE COUNTY OF DALLAS }

Subscribed to and sworn before me this 19th day of January, 1981.

Notary Linda K. Robbins Snyder
Linda K. Robbins Snyder

CERTIFICATE OF SERVICE

I, C.V. COMPTON SHAW, do hereby certify that a true and correct copy of this document will be properly served by mailing a true copy of the same, by the end of this day, January 19, 1981, to Ms. Iris J. Jones, Assistant Attorney General, P.O.Box 12548, Capitol Station, Austin, Texas 78711, by certified United States Mail, return receipt requested.

An original will also be sent, by the end of this day, to the Clerk, the Supreme Court of the United States, One First Street, N.E., Washington, D.C.20543.

Respectfully submitted,

C.V. Compton Shaw
4900 Lakeside Dr.
Dallas, Texas 75205
(214)-526-0744

APPENDIX

Denial of Petition for Rehearing----------p.1
Opinion of the Fifth Circuit
Court of Appeals----------p.2-3
Proof of Veteran's Status and Addendum------p. 4-5
Honorable Discharge----------p. 6

Exhibit 1

A-7

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

PERSONAL DATA

1. LAST NAME-FIRST NAME-MIDDLE NAME: SHAW, C.V. COMPTON
2. SERVICE NUMBER: RA 15 834 362
3. SOCIAL SECURITY NUMBER: 467 34 9573
4. DEPARTMENT, COMPONENT AND ARM OR SERVICE OR CLASS: ARMY RA Inf
5. GRADE, RATE OR RANK: SP4
6. PAY GRADE: E-4
7. DATE OF RANK: DAY 11 MONTH Oct YEAR 69
8. U.S. CITIZEN: [X] YES [ ] NO
9. PLACE OF BIRTH (City and State or Country): Dallas, Texas
10. DATE OF BIRTH: DAY 15 MONTH YEAR

SELECTIVE SERVICE DATA

10a. SELECTIVE SERVICE NUMBER: 41 30 45 393
10b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE: [illegible] 30, Dallas, TX 75200
11. DATE INDUCTED: DAY MONTH NA YEAR

TRANSFER OR DISCHARGE DATA

11a. TYPE OF TRANSFER OR DISCHARGE: Transferred to USAR (See 16)
11b. STATION OR INSTALLATION AT WHICH EFFECTED: Fort Hood, Texas
12. REASON AND AUTHORITY: Sec VIII Ch 5 AR 635-200 SPN 143 (Sec 30)
12a. EFFECTIVE DATE: DAY 14 MONTH Jul YEAR 70
12b. LAST DUTY ASSIGNMENT AND MAJOR COMMAND: Fort Hood, Texas Fourth US ARMY
13a. CHARACTER OF SERVICE: HONORABLE
13b. TYPE OF CERTIFICATE ISSUED: None
14. DISTRICT, AREA, COMMAND OR SCHOOL TO WHICH MILITARY PERSONNEL TRANSFERRED: Transferred to USAR Control Group(AnlTng) USAAC St. Louis MO 63132
15. DECORATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: RE- 2

SERVICE DATA

16. TERMINAL DATE OF ACTIVE SERVICE UNLESS OBLIGATION: DAY 3 MONTH Oct YEAR 74
17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION — a. SOURCE OF ENTRY: [X] ENLISTED (Any Branch) [ ] ENLISTED (Prior Service) [ ] REENLISTED [ ] OTHER
17a. TERM OF SERVICE (Years): 2
17b. DATE OF ENTRY: DAY 4 MONTH Oct YEAR 68
18. PRIOR REGULAR ENLISTMENTS: None
19. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC: PV1
20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State): Dallas, Texas
21. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code): 4515 Highland Dr Dallas(Dallas) TX 75205
22. STATEMENT OF SERVICE — a. CREDITABLE FOR BASIC PAY PURPOSES:

	YEARS	MONTHS	DAYS
(1) NET SERVICE THIS PERIOD	1	9	11
(2) OTHER SERVICE	0	0	0
(3) TOTAL (Line (1) plus line (2))	1	9	11
b. TOTAL ACTIVE SERVICE	1	9	11
c. FOREIGN AND/OR SEA SERVICE USARPAC	0	11	12

23. PRIMARY MILITARY OCCUPATIONAL CLASSIFICATION AND TITLE: 11B20 Lt Upns Infantryman
24. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER: NA
25. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: National Defense Service Medal; Vietnam Service Medal w/1 Bronze Service Star; Republic of Vietnam Campaign Medal; Combat Infantryman Badge; Army Commendation Medal; Vietnamese Cross of Gallantry w/Palm; Sharpshooter (Rifle); Marksman (M-60 MG)
26. EDUCATION AND TRAINING COMPLETED: Ft Polk, La - Lt Weapons Inf

VA AND EMP. SERVICE DATA

27. NON-PAY PERIODS TIME LOST (Including Date Zone): None
28. DAYS ACCRUED LEAVE PAID: None (See 30)
28a. VA CLAIM NUMBER: C- NA
29a. INSURANCE IN FORCE (Yes or No): [ ] YES [X] NO
29b. AMOUNT OF ALLOTMENT: NA
29c. MONTHLY ALLOTMENT ENROLLMENT: NA
29d. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE: [X] $15,000 [ ] $5,000 [ ] NONE

REMARKS

30. REMARKS: 4 Years College; Blood Group: "B Pos"
Item 26b: Excess leave of 22 days from 18 Apr 70 thru 6 May 70 and from 22 May 70 thru 24 May 70. Item 11c: To enter or return to college, university, or equivalent educational institution.
Inclusive dates of service in Vietnam during current period of service 28Apr69-9Apr70.

AUTHENTICATION

31. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Number, Street, RFD, City, County, State and ZIP Code): 4515 Highland Dr Dallas(Dallas) TX 75205
32. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED: C.V. Compton Shaw
33. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER: MARY M. PURCELL, MAJ, WAC, Act Asst AG
34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN: Mary M. Purcell

DD FORM 1 JUL 66 214 — PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE EFFECTIVE 1 JAN 68. ☆ GPO: 1968 O-311-312

ARMED FORCES OF THE UNITED STATES REPORT OF TRANSFER OR DISCHARGE

P4

GUZ-PSE-AW/pah
Shaw, C.V., Compton
467 749 673

DEPARTMENT OF THE ARMY
RCPAC
ST. LOUIS, MO. 63132

AUTHORIZATION FOR ISSUANCE OF AWARDS

TO: Commander, US Army Support Activity, Philadelphia, PA 19101

DATE: 18/May/79

CODE NUMBER FOR AWARDS

1	MEDAL OF HONOR	14	PURPLE HEART	27	NATIONAL DEFENSE SERVICE MEDAL	40	SERVICE STAR
2	DISTINGUISHED SERVICE CROSS	15	JOINT COMMENDATION MEDAL	28	KOREAN SERVICE MEDAL	41	BRONZE ARROWHEAD
3	DEFENSE DISTINGUISHED SERVICE MEDAL	16	PRESIDENTIAL UNIT EMBLEM	29	ANTARCTICA SERVICE MEDAL	42	FRENCH FOURRAGERE
4	DISTINGUISHED FLYING MEDAL	17	MERITORIOUS UNIT EMBLEM	30	ARMED FORCES EXPEDITIONARY MEDAL	43	BELGIAN FOURRAGERE
5	SILVER STAR	18	VALOROUS UNIT EMBLEM	31	VIETNAM SERVICE MEDAL	44	NETHERLANDS ORANGE LANYARD
6	LEGION OF MERIT	19	HONOR AWARD COMBAT SERVICE MEDAL	32	ARMED FORCES RESERVE MEDAL	45	PHILIPPINE DEFENSE RIBBON
7	DISTINGUISHED FLYING CROSS	20	AMERICAN DEFENSE SERVICE MEDAL	33	ARMY RESERVE COMPONENTS ACHIEVEMENT MEDAL	46	CIVIL ACTION RIBBON
8	SOLDIER'S MEDAL	21	AMERICAN CAMPAIGN MEDAL	34	COMBAT INFANTRYMAN BADGE	47	PHILIPPINE INDEPENDENCE RIBBON
9	BRONZE STAR MEDAL	22	ASIATIC-PACIFIC CAMPAIGN MEDAL	35	EXPERT INFANTRYMAN BADGE	48	UNITED NATIONS SERVICE MEDAL
10	MERITORIOUS SERVICE MEDAL	23	EUROPEAN-AFRICAN-MIDDLE EASTERN CAMPAIGN MEDAL	36	COMBAT MEDICAL BADGE	49	REPUBLIC OF VIETNAM CAMPAIGN RIBBON W/DEVICE (1960)
11	AIR MEDAL	24	ARMY VICTORY MEDAL	37	EXPERT FIELD MEDICAL BADGE	50	
12	JOINT SERVICE COMMENDATION MEDAL	25	ARMY OF OCCUPATION MEDAL	38	"V" DEVICE	51	
13	ARMY COMMENDATION MEDAL	26	MEDAL FOR HUMANE ACTION	39	OAK LEAF CLUSTER	52	

The Secretary of the Army directs that the following awards be engraved according to current regulations and issued to address shown below. (Engraving to be as indicated in classification or below.)

AWARD CODE	STARS		OAK LEAF CLUSTER		ARROW-HEAD	CLASP
	BRONZE	SILVER	BRONZE	SILVER		
*9						

COLD STAR LAPEL BUTTON

ENGRAVE	ISSUE	TYPE
	☐ COAT ☐ GRATUITOUSLY	☐ CLUTCH ☐ PIN

REMARKS

US ARMY SUPPORT CENTER
PHILADELPHIA, PENNSYLVANIA 19101
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE ARMY
DOD-314

FOR THE COMMANDER:

James S. Miller

JAMES S. MILLER
LTC, GS
DIRECTOR, PERSONNEL SERVICES

REPLACES EDITION OF 1 JUL 55, WHICH WILL BE USED.

P-5

Honorable Discharge

from the Armed Forces of the United States of America

This is to certify that

SHAN C V COMPTON 467-74-9673 SP4 USAR

was Honorably Discharged from the

United States Army

on the 1ST day of OCTOBER 1974 This certificate is awarded as a testimonial of Honest and Faithful Service

LOUIS J. PROST
BRIGADIER GENERAL, USA

P-6

80-1234

UNITES STATES SUPREME COURT

1980-1981 Term

RECEIVED
JAN 21 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RECEIVED
JAN 5 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

C.V. Compton Shaw — Petitioner

V.

THE UNIVERSITY OF TEXAS — Respondent

HEALTH SCIENCE CENTER

AT DALLAS

On appeal from the United States Court of Appeals for the Fifth Circuit, on writ of Certiorari to the United States Supreme Court.

PETITION FOR WRIT OF CERTIORARI

C.V. COMPTON SHAW
Attorney-Pro-Se
4900 Lakeside Dr.
Dallas, Texas 75205
(214)-526-0744

For Respondent:
Ms. Iris J. Jones
Assistant Atty. Gen.
Atty. Gen. Office
P.O.Box 12548
Capitol Station
Austin, Texas 78711
(512)-475-3131

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS**********	1
QUESTIONS PRESENTED**********	2-3
TABLE OF AUTHORITIES**********	4-5
NATURE OF THE CASE**********	6
GROUNDS FOR JURISDICTION BY THE SUPREME COURT*****	6
STATE OF THE CASE, COURSE OF THE PROCEEDINGS AND DISPOSITION IN COURT BELOW**********	7-9
STATE OF THE CASE, STATE OF THE FACTS**********	10-18
ARGUMENT**********	19-21
CONCLUSION**********	22-23
CERTIFICATE OF SERVICE**********	24
APPENDIX**********	25-26

QUESTIONS PRESENTED

Comes C.V. Compton Shaw, attorney-pro-se, and in an attempt to comply with Rule 21 of the Supreme Court of the United States, alleges the following:

The questions presented for review are five fold:

1. Are interlocutory orders, by a Federal District Court, non-appealable under 28 U.S.C. 1291 and 1292, if the matters appealed from are of such an interlocutory nature as to effect, or to be affected by, decision of the merit of the case ?

2. If, given that the Respondent didn't reply to the Appellant's brief within the time prescribed by law, given that the Clerk of the Fifth Circuit Court of Appeals stated that only those briefs on file by a certain date (and the record)would be taken in to consideration (the Respondent did not file his brief within the time limit prescribed by the Clerk for the Fifth Circuit), and given that the Appellant, in his argument to the Fifth Circuit, stated that the United States District Court for the Northern District of Texas acted in the decisions listed in a manner that constituted an abuse of its discretion, that there is no plain, speedy, or adequate remedy by appeal and that the Plaintiff-Appellant has not been granted the means for adequate discovery as a result of the adverse rulings listed in the Notice of Appeal,

should the interlocutory decisions be considered before final judgment?

3. Is a Notice of Appeal, by a non-lawyer, Attorney-Pro-Se, sufficient Notice of Appeal if such Notice of Appeal was filed before trial and final judgment of a Federal District Court, when such Notice of Appeal only involved certain interlocutory orders ?

4. Are 28 U.S.C. 1291 and 1292 and the requirement that a Notice of Appeal be sent after (not before) final judgment and trial unconstitutonal and in violation of the V, IX, X, and XIV Amendments to the Constitution of the United States, given the circumstances of this case?

5. Do the assertions of fact by the Appellant-Plaintiff in his brief stand as uncontested if the Defendant Appellee does not respond to them within the time limits required by law?

Respectfully submitted,
C.V. Compton Shaw

TABLE OF AUTHORITIES

PAGE

Rule 21, Rules of the Supreme Court of the U.S.,... 2

Rule 17.1, Rules of the Supreme Court of the U.S... 6

Rule 20.2, Rules of the Supreme Court of the U.S... 6

Rule 46, Rules of the Supreme Court of the U.S..... 6

Rule 47, Rules of the Supreme Court of the U.S..... 6

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 e. et seq..... 7

Texas Civil Statute 5430..... 8

Texas Civil Statute 6252-17a..... 8

Hazlewood. supra, 97 S. Ct. at 2742. n.14..... 15

Diaz V. Southern Drilling Corp., 427 F. 2d 1118 (1970)..... 19

Cohen V. Beneficial Industrial Loan Corporation. 337 U.S. 541-546 (1949)..... 19

28 U.S.C. 1291 and 1292..... 6,3,8

28 U.S.C. 1651 (a)..... 6,21

FRAP 21..... 21

185 F.2d 457..... 21

V, IX, X, and XIV Amendments to the Constitution of the U.S..... 3

38 U.S.C. 2012 et seq " Federal Veteran's Readjustment Act."..... 7

TABLE OF AUTHORITIES cont.

PAGE

S. Freud, " Civilization and Its Discontents," in The Standard Edition of the Complete Psychological Works, trans. J. Strachey (London: Hogarth Press, 1961) 21:95..... 23

S. Freud, "Some Psychical Consequences of the Anatomical Distinction between the Sexes ," 7:342..... 23

NATURE OF THE CASE

These questions arise from the judgment of the United States Court of Appeals for the Fifth Circuit deceided on August 20, 1980 and filed September 2, 1980 regarding the case of C.V. Compton Shaw, Plaintiff- Appellant v. The University of Texas Health Science Center at Dallas, Defendant-Appellee, No. 80-1024.

This judgment dismissed the appeal for want of jurisdiction giving as reasons that the orders appealed from were interlocutory and non-appealable under 28 U.S.C. 1291 and 1292 and that the Appellant did not file a notice of appeal after trial (although the Appellant did file a notice of appeal prior to trial.).

Although the Appellant does not have the funds to pay the filing fee , required by the Supreme Court, he does not apply to proceed under Rule 46 of the Rules of the Supreme Court;however, the Appellant has applied to proceed through Rule 47 of the Rules of the Supreme Court and through typewritten papers.

GROUNDS FOR JURISDICTION BY THE SUPREME COURT

The grounds for jurisdiction, in this case, are expressely quthorized by 28 U.S.C. 1651 (a) and Rules 17.1 and 20.2 of the Supreme Court.

STATE OF THE CASE
COURSE OF THE PROCEEDINGS AND
DISPOSITION IN COURT BELOW

The Plaintiff initially instituted suit in order to recover monetary relief for alleged discriminatory treatment suffered while attempting to secure employment with the Appellee based on the " Federal Veteran's Readjustment Act," 38 U.S.C. 2012 et seq. (Vietnam Era Veteran's Readjustment Act.).

Defendant moved to dismiss this original cause of action on the ground that no private cause of action is provided for or may be implied under the statute, 38 U.S.C. 2012.

The Court subsequently granted this motion through its Memorandum Opinion and Order of April 5, 1979, affording the Appellant the opportunity to amend his complaint in order to state a claim under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 e. et seq., stating that the Plaintiff-Appellant could add other causes of action which "he may have against the defendant, provided that subject matter jurisdiction exists in this court to entertain such claims."

The Appellant subsequently filed several amended pleadings, which the Court allowed him to file, alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 e. et seq., alleging a per se

and conspiracy to defame Appellant (Texas Civil Statute Article 5430) and invasion of the Plaintiff's right to privacy (Texas Civil Statute Article 6252-17a). The Plaintiff sought declaratory relief, including actual damages, damages as the result of the mental pain that the Plaintiff had suffered, and punitive damages.

Notice of Appeal, on certain pretrial orders, was filed on December 31, 1979, before trial and final judgement by the District Court. No notice of Appeal was filed subsequent to judgement by the District Court.

On January 23, 1980, a trial on the merits was held before the District Court. The trial court denied the Appellant any relief and dismissed the action on the merits. The Final Judgment was entered on February 19, 1980.

On August 20, 1980, The United States Court of Appeals for the Fifth Circuit dismissed the appeal for want of jurisdiction giving as reasons that the orders appealed from were interlocutory and nonappealable under 28 U.S.C. 1291 and 1292 and that the Appellant had not filed a Notice of Appeal after the final judgement of the District Court.

The appeal, prior to trial, was based on motions

for default judgement, (based on Defendant's failure to appear at its own deposition and to answer interrogatories), to strike Defendant's pleadings, and to compell answers to interrogatories. The motions were denied on December 21, 1979, October 12, 1979, September 6, 1979 (not just December 31, 1979- to the Appellant's knowledge, no order , as was listed by the Fifth Circuit Court of Appeals , in it's decision of August 20, 1980, was issued by the District Court with regard to the Appellant's case, on December 31, 1979.).

The Fifth Circuit Court of Appeals did not receive the Appellee's brief within the time period prescribed by it's own rules. The only question that the Appellee placed before the Court of Appeals was "1. Whether this Court has jurisdiction to entertain this appeal."

The Appellant- Plaintiff had petitioned the Fifth Circuit Court of Appeals, with the original three man panel presiding, to reconsider its decision of August 20, 1980.

The Petition for Rehearing was denied , by the United States Court of Appeals for the Fifth Circuit, on October 6, 1980.

Respectfully submitted,

C.V. Compton Shaw

STATE OF THE CASE

STATE OF THE FACTS

The Defendant-Appellee has had all of the resources of the Attorney General's Office of the State of Texas to present its case.

It should be noted that the Opinion of the Fifth Circuit Court of Appeals refers to the orders appealed from as being a single order; however, in actuality, the orders were District Court orders of December 21, 1979, October 12, 1979, September 6, 1979, and August 22, 1979 not December 31, 1979.

To the Appellant's knowledge, no order was issued by the District Court, with regard to the Appellant's case, on December 31, 1979.

Plaintiff claims that he was not hired by the Defendant due to his sex-male, veteran's status, and his prior complaint to the E.E.O.C., all of which resulted in retaliation in the form of a refusal to hire and the defamation as is further outlined in the next sentence and in the Plaintiff's amended pleadings.

The Plaintiff claims that the Defendant, without the permission of the Plaintiff, disseminated defamatory materials derived from his former instructors and others at U.T.H.S.C.D.. The Plaintiff asserts that the unauth-

orized dissemination of such material was illegal and resulted in the publication, which by its very nature, was not privileged, of untrue statements meant to defame, abuse, discredit, and villify the Plaintiff as a biochemist and as a person.

The Plaintiff asserts that, as many of the agents, employees, and officers of the Defendant knew of, repeated , agreed with, expounded upon, and further authorized the publication of such alleged defamatory communications, that the Defendant engaged in a per-se and conspiracy to defame the Plaintiff.

The Plaintiff asserts that the Defendant is still engaged in that conspiracy to defame the Plaintiff.

The Plaintiff claims that less qualified individuals, differing from the Plaintiff in their sex and veteran's status, were employed in positions for which the Plaintiff applied.

The Plaintiff, paradoxically, claims that the Defendant is not an equal opportunity employer of minorities other than of white females for the positions in question. White females appear to be disproportionately over-represened numerically and relatively (with respect to the percentage qualified in the job market).

This appears to be a case of the sex, race, and vet-

eran's status stereotyping of the positions for which the Plaintiff applied, Research Tech I and Research II positions.

The Plaintiff asserts that this policy of discrimination and the refusal to hire the Plaintiff is unrelated to any countervailing and/or relevant work or research purpose.

The Plaintiff asserts that he was better qualified than those differing from him in his veteran's status and sex in that he held a B.S. in Biochemistry and had relevant non-paid work experience.

The Plaintiff cancelled one appointment for an interview on October 3, 1978 because it was manifestly evident, through the attitude of those in the personnel office and of others responsible for hiring, that he was not under actual consideration for hiring.

Discovery ascertained, further evidencing intention to discriminate against the Plaintiff, that the Plaintiff was not on the computer list of qualified elgibles (this despite the fact that the Plaintiff had applied for the positions in question on many occassions and despite the fact that the Defendant had informally promised the E.E.O.C. that it would place the Plaintiff on such computer list.).

The requirements stated and advertised for the Research positions in question are incongruous with the qualifications of individuals actually hired. More specifically, the Defendant-Appellee hired , as Research Techs, individuals without a Bachelors Degree and/or relevant experience and/or a degree relevant to the stated requirements;although , the Defendant stated that the original reason why the Appellant-Plaintiff wasn't hired was because he didn't have a relevant degree.

The Plaintiff obtained his B.S. in Biochemistry in December of 1977 and applied for the positions in question with the Defendant on many occassions subsequent to that.

The Plaintiff originally applied for the positions in question with the Defendant when he was only three semester hours short of fulfilling the degree requirements of a B.S. in Biochemistry.

Mr. J.L. Reynolds, Director of Personnel for the Defendant, stated that the Appellant came on "very strong" and that he thought that this would prevent the Plaintiff from following orders. Mr. Reynolds also stated that the research tech position, the position in question, was a "well structured and controlled" position.

The Plaintiff is an honorably discharged veteran holding the Bronze Star and the Army Commendation Medal .

He was subject to no disciplinary action while in the service nor was he ever accused of violating, while in the service, disciplinary rules or of disobeying orders.

A letter from Mr. Reynolds indicates that his comments, with regard to the Plaintiff's coming on strong, were based upon comments by instructors that the Plaintiff had ideas with regard to what research might be undertaken.

These ideas were illicited by the Defendant's employees and/or expressed in informal conversation (with regard to what research might be undertaken). The impression that Mr. Reynolds conveyed, that the Plaintiff was aggressive in behavior, was not based upon the facts but on professional jealousy on the part of some of the Plaintiff's instructors.

Dr. Smith, one of the instructors who gave the Plaintiff a bad recommendation and who was one of the Defendant's employees, had asked the Plaintiff to stay in a non-paying research position with him ; thus, he indicated that the Plaintiff's work as a research tech was satisfactory but retaliated,by giving the Plaintiff an unfavorable recommendation , when the Plaintiff could not continue working with Dr. Thomas Smith because of the burden of his academic requirements.

The Plaintiff had determined why Dr. Smith had not been getting results in his research. Two of his

assistants had made a fundamental mistake in the research and experimental process which the Plaintiff had discovered.

The Plaintiff had determined why nicotinic acid inhibits purine biosynthesis while a student at the Defendant institution. This is considered a major discovery.

The facts and circumstances , thus presented, indicate that the Defendant was motivated by improper motive in making the defamatory statements and in not hiring the Plaintiff.

The statements by Mr. Reynolds imply that the masculine "strong" traits are inappropriate to the "well structured and controlled" environment in which females, as stereotyped, are more adaptable. These statements indicate discrimination based upon sex in the hiring process for the positions in question , by the Defendant.

Statistical data, obtained through discovery, and as applied in this case and analyzed in reference to Hazlewood, supra, 97 S. Ct. at 2742, n.14, shows that males are under-represented by 15 standard deviations and that veterans are under-represented by 8.4 standard deviations; and, thus, that bias in hiring is shown against males and veterans.

The Defendant-Appelee objected successfully to answering an interrogatory as to how many Vietnam veterans had been hired by the Defendant.

The reasons given for not hiring the Appellant are a mere pretext with the actual reason being that the Appellant is a male, and an honorably discharged Vietnam Veteran,who, because of these factors and the fact that he had earlier made a complaint regarding the Appellee to the E.E.O.C., was discriminated against in employment in violation of both state and Federal laws.

Slanderous and defamatory statements, which were published and continue to be published by the Appellee to the general public, were designed to injure the Appellant . Many of these statements were slanderous and defamatory per se.

These slanderous and defamatory statements and the refusal to hire caused the Appellant much mental anguish, embarrassment, humiliation, economic distress, and tended to injure the Appellant in whatever field of endeavor he attempted to enter.

The statements were made by individuals who knew that they were false or who made them with careless disregard as to their truth.

The defamatory statements were false.

The Appellant has not been granted, thus, the means for adequate discovery.

If the Appellee meant, by stating that the Appellant "came on very strong," that the Appellant was rude, crude, or aggressive in an abrasive manner, the Appellant denies this. In fact, the Appellant won the Vietnamese Cross for Gallantry on two occassions.

The Plaintiff has not, as of this date responded to the pretensiously vulgar , direct and indirect references to the Plaintiff's social status made by the Defendant in its defamatory remarks as the Plaintiff believes that the ideals of a social democracy require that a persons social status should not influence hiring in employment , legal rights, and certainly should not be used as a means to defame an individual;however, the Plaintiff must rebutt such defamatory allegations on the part of the Defendant by stating that he is the third generation of a family to live on Lakeside Dr., an upper class street in Dallas, his father and his uncles were all attorneys , his grandfather was a judge, and all of his female relatives up to his first cousins were debutants. Most all , if not all of those individuals making negative comments about the Plaintiff's social status,were from working class backgrounds.

Discovery ascertained that, in regard to many of the trenchant facts concerning this case, that the Appellee produced many statements and facts which were false, misleading, and deceptive.

Many of the defamatory remarks, which the Appellee published, if considered in the light of those who uttered them, indicate a prejudicial attitude towards the Appellant because of his race (although the Appellant believes that minorities other than white females are discriminated against), his sex, his veteran's status, and his prior complaint to the E.E.O.C..

Respectfully submitted,

C.V. Compton Shaw

ARGUMENT

Plaintiff-Appelant's Assertion of Trial Court Error Were Properly Before the Fifth Circuit Court of Appeals on Appeal

Appellant filed his notice of appeal from the decisions listed, before trial, in a timely fashion and the Appellee was fully aware that an appeal was being taken and that the appeal was an appeal from the decisions listed before final judgement and not an appeal of the final judgement as was clarified in Plaintiff-Appellant's Rational for Appeal: "As Plaintiff has not been granted the means for adequate discovery, h as had the adverse rulings, as described above, and is, as a result, unprepared to make an adequate defense (Diaz v. Southern Drilling Corp., 427 F. 2d 1118 (1970)), the Plaintiff argues that to delay appellate review until final judgement would impose undue hardship and/or cause irreparable harm."

The Appellee quotes Cohen V. Beneficial Industrial Loan Corporation, 337 U.S. 541. (1949) as a reason for denying jurisdiction;however, this same case, as above, on page 546 goes on to imply that matters are appealable if the matters appealed from are of such an interlocutory nature as to effect, or to be affected by, decisions of the merit of the case.

Given the decisions delineated above and the nature of the decisions appealed to the Fifth Circuit Court of Appeals and the fact that the notice and rational for appeal were delivered to the Appellee in a timely fashion, before trial, the appeal was properly affected and the Fifth Circuit Court of Appeals does have jurisdiction.

The Clerk of the Fifth Circuit Court of Appeals, in a letter to the Appellee, dated March 25, 1980, stated that if the Appellee's brief wasn't filed within ten days, only those briefs on file by that date (and the record) would be taken into consideration.

The Appellee's brief, which raised only the question of jurisdiction because of failure to file notice of appeal subsequent to the final decision of the District Court by the Plaintiff, is dated April 9, 1980. The Appellee did not request for a time extension to file his brief.

Given then, that the Defendant's brief was not to be taken into consideration, such allegations of fact, argument, and conclusions of fact which the Appellant set forth in his appeal brief should be taken as uncontested and true.

It is true that such review before final judgement

is not a matter of right but rests in the sound judgement of the appellate court.(See 185 F. 2d 457 ; and FRAP 21).

Such interlocutory appeals, as are in question in this case, are expressly authorized by 28 U.S.C. 1651 (a), which provides: " The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

In that the Respondent did not respond within the time required by law to the grounds for which such review is deemed justifiable, such grounds should be considered, as argued by the Appellant, true.

The Appellant argues that the District Court acted, in regard to the questions presented, in a manner constituting an abuse of its discretion; that he had no plain, speedy, or adequate remedy by appeal;and that to delay appellate review until final judgement would impose undue hardship and cause irreparable harm.

Respectfully submitted,

C.V. Compton Shaw
4900 Lakeside Dr.
Dallas,Texas 75205
(214)-526-0744

CONCLUSION

As many questions of law are involved, which are based upon numerous judicial precedents,as listed, the Appellant has presented facts and arguments which have endeavored to demonstrate that the violation of these precedents by the United States District Court for the Northern District of Texas and by the United States Court of Appeals for the Fifth Circuit, through their rulings on the issues presented, would produce and ununiformity of decisions amongst both lower and appellate courts.

As this is the case, the Plaintiff-Appellant argues, that the Supreme Court should rule that the Fifth Circuit does have jurisdiction over the interlocutory orders presented and/or grant the Appellant a writ of mandamus ordering the United States District Court for the Northern District of Texas to enter an order striking out the Defendant-Appellee's answer and entering judgement by default in favor of the relief demanded in the amended complaint, or such other order as is just and in support of said motion, in order to protect the rights of discovery and uniform judicial procedure for both the Plaintiff and other litigants.

CONCLUSION cont.

As Freud argues, " the first requisite of civilization..... is that of justice.....that is, the assurance that a law once made will not be broken in favor of an individual."

As the Plaintiff realizes that, in our society, women are less suspect than men in matters of legal misdeed , the Plaintiff uses the following quote to further demonstrate that his claim does have validity (the Plaintiff asserts that all individuals should be looked upon as reacting to their environment in their own unique way-without making pre-judgments based upon sex): Freud writes that "for women the level of what is ethically normal is different from what it is in men. Their super-ego is never so inexorable, so impersonal, so independent of its emotional origins as we require it to be in men.... They show less sense of justice than men.....they are less ready to submit to the great exigencies of life.... they are more often influenced in their judgements by feelings of affection or hostility...".

The Plaintiff has argued that reverse sex discrimination has resulted, in this case, to much damage to him.

Respectfully submitted,

C.V. Compton Shaw

CERTIFICATE OF SERVICE

I, C.V. Compton Shaw, do hereby certify that a true and correct copy of this document will be properly served by mailing a true copy of the same , by the end of this day, January 19, 1981, to Ms. Iris J. Jones, Assistant Attorney General, P.O. Box 12548, Capitol Station, Attorney General's Office, Austin, Texas 78711, through the United States Mail, return receipt requested.

Respectfully submitted,

C.V. Compton Shaw
4900 Lakeside Dr.
Dallas, Texas 75205
(214)-526-0744

APPENDIA

PAGE

PETITION FOR REHEARING..... 1

OPINION ON APPEAL FROM DISTRICT COURT..... 2-3

JUDGEMENT OF DISTRICT COURT..... 4

ORDER ON MOTION TO STRIKE OUT PLEADING AND TO ORDER DEFENDANT TO ANSWER..... 5-6

ORDER ON MOTION OF RAY MARSHALL, SECRETARY OF LABOR, TO QUASH THE SUBPOENA DUCES TECUM OR IN THE ALTERNATIVE MOTION FOR PROTECTIVE ORDER..... 7-8

ORDER ON MOTION TO FILE AMENDED PLEADINGS.... 9

ORDER ON MOTION TO FILE AMENDED COMPLAINT.... 10

ORDER ON MOTION TO COMPEL ANSWER TO INTERROGATORIES AND PROSECUTE ACTION IN FORMA PAUPERIS..... 11

DOCKET CALL FOR CASE..... 12-13

ORDER REGARDING PLAINTIFF'S MOTION FOR SANCTIONS..... 14

ORDER REGARDING PLAINTIFF'S MOTION FOR A MORE DEFINITE STATEMENT..... 15

ORDER SETTING DATE OF TRIAL..... 16

APPENDIX cont.

	PAGE
ORDER REGARDING PLAINTIFF'S MOTION FOR A MORE DEFINITE STATEMENT.....	17
ORDER IN REGARD TO SEVERAL MOTIONS FILED BY PLAINTIFF.....	18
ORDER IN REGARD TO MOTION TO COMPELL ANSWERS TO INTERROGATORIES.....	19
ORDER ON MOTION TO AMEND PLEADINGS.....	20
ORDER ON MOTION FOR PLAINTIFF'S REQUEST FOR THE COURT TO APPOINT COUNSEL.....	21
MEMORANDUM OPINION AND ORDER BY DISTRICT COURT ON PLAINTIFF'S ORIGINAL COMPLAINT.....	23-24
ORDER ON MOTION FOR DEFAULT SUMMARY JUDGMENT.....	~~24~~ 25

Orders are in order of date issued, with the most recent order first.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
RECEIVED
OCT 6 1980
NEW ORLEANS, LA.

NO. 80-1024

C.V. COMPTON SHAW,

Plaintiff-Appellant,

versus

U.S. COURT OF APPEALS
FILED
OCT 6 1980
GILBERT E. GANUCHEAU
CLERK

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

---

ON PETITION FOR REHEARING

(October 6, 1980)

Before TJOFLAT, FRANK M. JOHNSON and GARZA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

United States Circuit Judge

p.1

RECEIVED
SEP - 2 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

DO NOT
PUBLISH

No. 80-1024
Summary Calendar*

C.V. COMPTON SHAW,

Plaintiff-Appellant,

versus

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas

(AUGUST 20, 1980)

Before TJOFLAT, FRANK M. JOHNSON, JR. and GARZA, Circuit Judges.

PER CURIAM:

Appellant Shaw filed a pro se complaint in the District Court alleging a violation of the Vietnam Veteran's Readjustment Assistance Act, 38 U.S.C. §2012 et seq. On motion of the Defendant, the District Court dismissed on the ground that no private cause of action is provided by the statute. The court allowed Shaw the opportunity to amend his complaint and state a claim of sex and race discrimination under Title VII, 42 U.S.C. §2000e-5. He also alleged a cause of action for defamation and invasion of privacy.

Prior to trial, Shaw filed motions for default judgment, based on Defendant's failure to appear at its own deposition and to answer interrogatories), to strike Defendant's pleadings, and to compell answers to interrogatories. The motions were denied on December 31 1979, and Appellant appeal specifically denials of those motions. On January 23, 1980, the case went to trial. Relief was denied and the case was dismissed on February 19, 1980. Appellant did not file a notice of appeal after the trial and in his appellate brief he argues only that the District Court erred in denying the pretrial motions.

J.2

On these facts, we are compelled to dismiss the appeal for want of jurisdiction. Shaw filed his notice of appeal from orders which are interlocutory and nonappealable under 28 U.S.C. §§1291 and 1292. An attempt to appeal a nonappealable order is a nullity and the notice of appeal filed herein was manifestly ineffective to transfer jurisdiction to this court.

APPEAL DISMISSED.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB 19 1980
JOSEPH McELROY, JR., CLERK
BY [signature] Deputy

C. V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

JUDGMENT

This action came on for trial before the court, Honorable Robert M. Hill, United States District Judge, and the issues having been duly tried and a decision have been duly rendered,

It is ORDERED and ADJUDGED that the plaintiff, C. V. Compton Shaw, take nothing, that the action be dismissed on the merits and that the defendant, The University of Texas Health Science Center at Dallas, recover of the plaintiff its costs of action.

Dated this 19 day of February, 1980.

[signature]
United States District Judge

P. 4

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 21 1980
JOSEPH McELROY, JR., CLERK
BY _____ Deputy
COPY

C. V. COMPTON SHAW, Plaintiff §

V. §

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant §

CIVIL ACTION NO. CA-3-78-0752-D

ORDER

Came on for consideration plaintiff's Motion to Strike Out Pleading and Enter Default Judgment for Failure of the Defendant to Answer Interrogatories and plaintiff's Motion to Order Defendant to Answer. The court has considered these motions and is of the opinion that they should be denied.

I. Motion to Strike Out Pleading

The court will treat the plaintiff's objections to defendant's answers in the order raised:

(1) The answers to interrogatories are signed. The reference to first and second set is merely an error in numbering and not a substantive defect.

(2) Mr. Reynolds, in defendant's Amended Answer to Plaintiff's Third Set of Interrogatories, has answered the relevant portions of interrogatories seven through twenty three.

(3) The evidence on file reflects that another individual indicated that Dr. Masters stated that plaintiff lacks common sense. Dr. Masters has not so stated for the record and cannot be compelled to do so if she now denies making such a statement.

(4) Dr. Smith has adequately answered interrogatory No. 17b.

(5) Ms. Stone's answer to interrogatory No. 3 is adequate.

(6) Dr. Prough's answers are adequate.

(7) Mr. Owen Sherman's answers are adequate.

(8) Interrogatories 24 through 29 were answered. Plaintiff's objection to these answers is unclear to the court.

p. 5

(10) Interrogatory No. 18 was answered adequately. Amendment 6) Defendant has filed sworn answers to plaintiff's first set of interrogatories.

II. Motion to Order Defendant to Answer

Plaintiff has asked defendant to list the number of applications for Research Tech I and II positions it received from veterans. Defendant objected to this question as irrelevant, but answered the interrogatory as it relates to Vietnam Era Veterans. The court is of the opinion that the interrogatory, as it relates to non-Vietnam veterans, is not relevant within the meaning of Rule 26 of the Federal Rules of Civil Procedure, and plaintiff's motion is accordingly denied.

It is so ORDERED.

Dated this 18 day of January, 1980.

United States District Judge

P6

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 11 1980
JOSEPH F. CELROY, JR., CLERK
BY R. Compton Deputy

C. V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

ORDER

Came on for consideration the motion of Ray Marshall, Secretary of Labor, to quash the subpoena duces tecum or in the alternative motion for protective order. The court has considered the motion and accompanying brief and is of the opinion that the motion to quash should be denied but that the alternative motion for protective order should be granted.

In light of 44 U.S.C. §3105, Bill A. Bett, the subpoenaed witness, may produce certified copies rather than the original documents. Further, based on the agency's own executive privilege and its privilege to protect the identity of person's furnishing the agency with information, the witness may delete those portions of the documents subpoenaed which contain:

(1) opinions, estimates, or recommendations made in the course of developing official action by the United States Department of Labor or any of its component units;

(2) the identity of private citizens, other than the plaintiff, who furnished information to the United States Department of Labor in reference to plaintiff Shaw's complaint against defendant or any material tending to reveal the identity of such private citizens.

P.7

The examination of witness Bett will be likewise limited unless otherwise ordered by this court. The court finds that this information would be of marginal relevance at best to the trial of this case and plaintiff's need for the information is therefore outweighed by the policies behind the government's qualified privilege.

It is so ORDERED.

Dated this 11 day of January, 1980.

United States District Judge

p 8

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 8 1980
JOSEPH McELROY, JR., CLERK
BY R Edmiston Deputy

COPY

C.V. COMPTON SHAW,
Plaintiff

vs.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS,
Defendant

CIVIL ACTION NO.
CA-3-78-0752-D

ORDER

Plaintiff's motion for leave to file amended pleadings came on for consideration before the court, the Honorable Robert M. Hill, United States District Judge. The court has considered the motion and is of the opinion that the motion should be granted.

It is so ORDERED.

Dated this 8th day of Jan., 1980.

Robert M. Hill
United States District Judge

p 1

-a

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 2 1980
JOSEPH McELROY, JR., CLERK
BY _____ Deputy
COPY

C. V. COMPTON SHAW, Plaintiff

V.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant

§ CIVIL ACTION NO. CA-3-78-0752-D

ORDER

The Motion to Amend Complaint, filed December 28, 19 79, by plaintiff, fails to comply with Rule 5.2(b), Local Rules of Practice for the Northern District of Texas. Accordingly, the court is of the opinion that the Motion should be denied, without prejudice to its being refiled.

It is so ORDERED.

Dated this 2 day of January, 19 80.

United States District Judge

p.10

p10

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
DEC 21 1979
JOSEPH McELROY, JR., CLERK
BY_____ Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

C. V. COMPTON SHAW,
Plaintiff

V.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS,
Defendant

CIVIL ACTION NO. CA-3-78-0752-D

ORDER

Came on for consideration plaintiff's Motion to Compel Answer to Interrogatories to Defendant and Motion to Prosecute This Action in Forma Pauperis.

Since defendant has now answered plaintiff's interrogatories, the former motion is moot. As to the latter, the court has considered the motion and attached affidavit and is of the opinion that the plaintiff is not a pauper and the motion should be denied.

It is so ORDERED.

Dated this 21 day of December, 1979.

United States District Judge

P.11

NOTICE TO ALL PARTIES

The listed civil cases are set for trial as indicated.

All parties shall comply with the Local Rules of Practice for the Northern District of Texas.

Dated this 6 day of November, 1979.

Robert M. Hill
United States District Judge

P. 12

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE HONORABLE ROBERT M. HILL
UNITED STATES DISTRICT JUDGE, PRESIDING

NON-JURY TRIAL DOCKET

CIVIL CASES

Docket Call Monday, January 21, 1980 at 9:30 A.M.

1. CA-3-75-1540 CONSTANCE E. McLENDON AND JEAN E. HANLIN
V.
CONTINENTAL TRAILWAYS, INC. AND GENERAL HIGHWAY SERVICES, INC.

Linda Coffee, Sue Goolsby-----Eric F. Klein, Jr.

Civil Rights

2. CA-3-77-1303 JACQUELYN GREENE
v.
THE SOUTHLAND CORPORATION

Larry Morris-----Lyman G. Hughes

Civil Rights

3. CA-3-78-0752 C. V. COMPTON SHAW
V.
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS

C. V. Compton Shaw, pro se-----Susan Dasher

Federal Veterans Rehabilitation Act

4. CA-3-79-0026 CENTRE TENNIS CLUB, LTD. AND CENTRE TENNIS CLUB, INC.
V.
SOUTHWESTERN BELL TELEPHONE COMPANY

Ronald Law-----Martin C. Ruegsegger

Suit on Contract

5. CA-3-75-0223 S. D. ROBINSON AND FAY ROBINSON
V.
HOME ENGINEERING INC.

Charles Attaway----Howard D. Pattison

Alleged Violation of Interstate Land Sales Act

P-13

P-13

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 12 1979
JOSEPH McELROY, JR., CLERK
BY Deputy

Exhibit 3

C.V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

ORDER

Came on for consideration plaintiff's Motion for Sanctions of September 25, 1979. On August 22, 1979, this court had ordered defendant to answer a set of nine interrogatories. On September 24, 1979, defendant answered the first seven, but neither answered nor objected to interrogatories no. 8 and 9. Plaintiff therefore moved for sanctions under Rule 37 of the Federal Rules of Civil Procedure. The court will reserve the question of whether sanctions should be imposed and the nature of the sanctions, if any, until a later time.

It is so ORDERED.

Dated this 12 day of October, 1979.

United States District Judge

P14

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP 14 1979
JOSEPH McELROY, JR., CLERK
BY R Edmiston
Deputy

C. V. COMPTON SHAW, Plaintiff §

V. §

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant §

CIVIL ACTION NO. CA-3-78-0752-D

ORDER

Came on for consideration plaintiff's motion to reconsider his motion for more definite statement. This court, having considered the motion and the authority cited by plaintiff is of the opinion that the motion should be denied.

It is so ORDERED.

Dated this 14 day of September, 1979.

United States District Judge

P 15

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP 12 1979
JOSEPH M. McELROY, JR., CLERK
BY R. Edmiston Deputy

C. V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

ORDER

It is ORDERED that the above styled cause is set for trial on the merits on January 21, 1980, at 9:30 A.M. The case will not be reset absent extraordinary circumstances.

Dated this 12 day of September, 1979.

United States District Judge

P. 16

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP 6 1979
JOSEPH McELROY, JR., CLERK
BY R Edmiston Deputy

C. V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

ORDER

Came on for consideration plaintiff's motion for more definite statement in defendant's amended answer. This court, having considered the motion is of the opinion that it should be denied.

The case cited by plaintiff, Moriarty v. Curran, 18 F.R.D. 461 (S.D. N.Y. 1956), in actuality held that no amendment of the answer was required. "The Federal Rules provide quite satisfactorily for the eliciting of detailed facts, and it is an entirely proper practice to leave to these pre-trial procedures the praticularization of notice-giving pleadings." Id. at 462. See also Local Rule 5.2(d).

Plaintiff's motion is DENIED.

Dated this 6th day of September, 1979.

United States District Judge

p. 17

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
AUG 22 1979
JOSEPH M. ELROY, JR., CLERK
BY [illegible]
Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

C. V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

Exhibit 6

ORDER

Came on to be heard several motions filed by plantiff, specifically: (1) motion to allow photographic reproduction (February 26, 1979); (2) motion to compel (July 23, 1979); (3) application for default summary judgment (April 12, 1979); (4) motion for partial summary judgment (July 16, 1979); and (5) motion to strike out pleading (June 28, 1979). The court, having considered these motions and the arguments of counsel, is of the opinion that said motions should be DENIED.

As to the discovery motions directed against the Department of Labor [(1) and (2) above], plaintiff is reminded that under the Federal Rules of Civil Procedure interrogatories and requests of admission can only be served on parties to the lawsuit.

Plaintiff's motion of July 16 complains in part of defendant's failure to respond to interrogatories. These interrogatories were served on defendant on May 23, 1979, and defendant has neither answered nor filed its objections to the questions. All objections defendant might have made to these interrogatories are therefore waived, Dollar v. Long Mfg., N.C., Inc., 561 F.2d 613 (5th Cir. 1977), and defendant is order to answer said interrogatories. Fed. R. Civ. P. 37.

It is so ORDERED.

Dated this 22 day of August, 1979.

[signature]

United States District Judge

p 18

n/a

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUL 6 1979
JOSEPH McELROY, JR., CLERK
BY R. Edmiston
Deputy

C. V. COMPTON SHAW, Plaintiff §

V. §

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant §

CIVIL ACTION NO. CA-3-78-0752-D

ORDER

The motion for Order to compel answer to interrogatores and/ or hold the Chief of Police of the Highland Park Police Department in contemp for failure to answer interrogatories filed by the plaintiff came on for consideration before the court, the Honorable Robert M. Hill, United States District Judge. The court has considered the motion and is of the opinion that the motion should be denied.

It is so ORDERED.

Dated this 6 day of July, 1979.

Robert M. Hill

United States District Judge

P. 19

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUN 19 1979
JOSEPH McELROY, JR., CLERK
BY [signature] Deputy

C. V. COMPTON SHAW,
Plaintiff

V.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS,
Defendant

§ CIVIL ACTION NO. CA-3-78-0752-D

ORDER

Plaintiff's motion for leave to file amended pleadings came on for consideration before the court, the Honorable Robert M. Hill, United States District Judge. The court has considered the motion and is of the opinion that the motion should be granted.

It is so ORDERED.

Dated this 14 day of June, 1979.

[signature]
United States District Judge

p. 20

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 13 1979
JOSEPH F. McELROY, JR., CLERK
BY R Edmiston DEPUTY

C.V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

ORDER

The court has set the plaintiff's request for counsel in the above styled cause on May 29, 1979, at 9:00 A.M. All parties are directed to appear at this hearing.

It is so ORDERED.

Dated this 13th day of April, 1979.

United States District Judge

p. 2/

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR - 5 1979
JOSEPH F. ELROY, JR., CLERK
BY
Deputy

Exhibit 5

C. V. COMPTON SHAW,
Plaintiff

V.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS,
Defendant

§
§
§
§ CIVIL ACTION NO. CA-3-78-0752-D
§
§
§
§
§

Memorandum Opinion and Order

Came on for consideration defendant's motion to dismiss plaintiff's 38 U.S.C. §2012 cause of action in the above-styled cause. Having considered the motion, the court is of the opinion that the motion should be granted.

This suit was instituted by plaintiff in order to recover monetary relief for alleged discriminatory treatment suffered by him while attempting to secure employment with the defendant. Plaintiff's action is based on the "Federal Veteran's Rehabilitation Act," 38 U.S.C. §§2012 et. seq. (Vietnam Era Veteran's Readjustment Act). Defendant has moved to dismiss this action on the ground that no private cause of action is provided for or may be implied under the statute. 38 U.S.C. §2012 provides:

> (a) Any contract in the amount of $10,000 or more entered into by any department or agency for the procurement of personal property and non-personal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and non-personal services (including construction) for the United States. In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall implement the provisions of this section by promulgating regulations within 60 days after the date of enactment of this section, which regulations

P 22

> shall require that (1) each such contractor undertake in such contract to list immediately with the appropriate local employment service office all of its suitable employment openings, and (2) each such local office shall give such veterans priority in referral to such employment openings.
>
> (b) If any disabled veteran or veteran of the Vietnam era believes any contractor has failed or refuses to comply with the provisions of the contractor's contract with the United States, relating to the employment of veterans, such veteran may file a complaint with the Veterans' Employment Service of the Department of Labor. Such complaint shall be promptly referred to the Secretary who shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant consistent with the terms of such contract and the laws and regulations applicable thereto.
>
> (c) The Secretary shall include as part of the annual report required by section 2007(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing suitable employment openings, the nature, types, and number of positions listed and the number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2) of this section.

The court has been unable to find any reported case which has effectively determined whether a private cause of action may be maintained under 38 U.S.C. §2012. The issue was presented in Wood v. Diamond State Telephone Co., 440 F.Supp. 1003, 1005 (D.Dele. 1977), but was left undecided. A number of cases, however, have refused to imply a private right of action under a virtually identical statute, 29 U.S.C. §793 (Vocational Rehabilitation Act), which provides for an affirmative action program for handicapped individuals who seek employment with employers who have contracts with the federal government, see, e.g., Wood v. Diamond State Telephone Co., 440 F.Supp. at 1006; Moon v. Roadway Express, Inc., 439 F.Supp. 1308 (N.D. Ga. 1977); Rogers v. Frito-Lay, Inc., 433 F.Supp. 200 (N.D. Tex. 1977). All three of the above-cited cases have analyzed the problem in light of the standards of Cort v. Ash, 422 U.S. 66 (1975) and have concluded that no private action exists because (1) the statute does not bar discrimination, but only encourages the hiring of the handicapped; (2) there is no indication of any legislative intent, explicit or implicit, to create such a remedy; and (3) the only remedy contemplated by the statute is enforcement of the contractual provision by the administrative agency. No distinction exists between these statutes which create

the affirmative action programs for the handicapped and veterans by contractual provision. Nor are there material variations in the regulations promulgated under the statutes. See 41 C.F.R. §60 (1978). Therefore, the court is of the opinion that the analysis invoked by the courts examining 29 U.S.C. §793 is applicable to 38 U.S.C. §2012, and concludes that the plaintiff has no private action under the latter statute.

Among the numerous documents that the plaintiff has filed with the court is a charge of discrimination filed with the EEOC against the defendant. Rather than dismissing the action in its entirety, the court will afford the plaintiff the opportunity to amend his complaint in order to state a claim under Title VII if he possesses such an action. The court notes for the benefit of the plaintiff pro se that a jurisdictional prerequisite to a suit under Title VII is the filing of such claim within ninety days from date of receipt of a right-to-sue letter from the EEOC, see 42 U.S.C. §2000e-5(f)(1). Plaintiff may also add other causes of action which he may have against the defendant, provided that subject-matter jurisdiction exists in this court to entertain such claims.

Accordingly, it is therefore ORDERED that defendant's motion to dismiss plaintiff's 38 U.S.C. §2012 cause of action be granted. This case will be dismissed within 30 days from the file date of this order unless plaintiff adds a claim for relief cognizable in this court by such date. This case is removed from the trial setting of April 23, 1979.

Dated this 12 day of April, 1979.

United States District Judge

p. 24

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR - 5 1979
JOSEPH McELROY, JR., CLERK
BY R Lamaster
Deputy

C. V. COMPTON SHAW, Plaintiff	§	
V.	§	CIVIL ACTION NO. CA-3-78-0752-D
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS, Defendant	§	

ORDER

The motion for default summary judgment filed by the plaintiff came on for consideration before the court, the Honorable Robert M. Hill, United States District Judge. The court has considered the motion and is of the opinion that the motion should be denied.

It is so ORDERED.

Dated this 5th day of April, 1979.

Robert M. Hill

United States District Judge

p-25